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ABSTRACT

This handbook contains basic resource material for debating significant changes in the United States jury system. Chapter 1 outlines available sources of information for preliminary research. Chapters 2 and 3 present background information on the federal and state court systems and the jury system. Chapter 4 discusses an interpretation of the proposition itself and several issues that could be developed. The first appendix is an extensive source bibliography, arranged by potential issues. Appendix 2 presents brief summaries of significant Supreme Court decisions that relate to the topic, and appendix 3 lists important legal terms and their definitions. (RN)

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DEBATING THE JURY SYSTEM
a resource book

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The Sources: Availability and Credibility

No debate handbook could or should present all the information needed to debate the current topic. The diligent debater merely uses a handbook as a starter and for assistance in learning availability of appropriate sources. Research is a vital part of the debater's job. There is no substitute for long hours of reading and note-taking.

This initial section will discuss sources available for debating the jury system. For convenience, sources will be divided into: books, newspapers, periodicals, and unclassified additional sources. Discussion of sources will be selective and not attempt to cover all possible material.[1]

This section is intended to help the debater in getting started, and hopefully, lead him in the right direction toward productive research.

Books: As a first step in researching the jury system, it would be wise to acquire background knowledge and understanding of the topic. This is particularly necessary due to varying state laws, complicated federal and state judicial systems, and technical terminology involved in this year's topic. Considerable misunderstanding could develop without preliminary background reading on this topic.

Brief descriptions of the state and federal court systems can be found in political science textbooks on state and local government. Among others, Local Government and Administration by Russell Ross and Kenneth Millsap[2]

[1]For a more thorough listing of library sources, see Ehninger, Douglas and Brockriede, Wayne. Decision by Debate, New York: Dodd, Mead and Co., 1969. pp. 42-59.

[2]Ross, Russell & Millsap, Kenneth F. State and Local Government and Administration. New York: The Ronald Press Co., 1966. (Chapt. 12, "The State Judiciary", pp. 299-324). More detailed descriptions are found in Wendell, Mitchell. Relations Between the Federal and State Courts. New York: Columbia Univ. Press, 1950 or Abraham, Henry J. The Judicial Process. Fair Lawn, N.J.: Oxford University Press, 1962.

provides a clear, concise explanation of the dual state and federal court systems, their functions and relationships, their judges, and the jury system. A more detailed description of the federal courts is given by Jay A. Sigler in An Introduction to the Legal System.[3]

There are surprisingly few recent books dealing with the jury system, its theory, value, defects and possible revisions. Some of the more authoritative books that should be read include:

Bloomstein, Morris J. Verdict the Jury System. New York: Dodd-Mean, 1968.
Gleisser, Marcus. Juries and Justice. South Brunswick: Barnes, 1968.
Green, Leon. Why Trial by Jury? Evanston, Ill.: Northwestern Uni ., 1950.
Jahnige, Thomas and Goldman, Sheldon. The Federal Judicial System. New York: Holt, Rinehart and Winston, Inc., 1968.
Joiner, Charles. Civil Justice and the Jury. Englewood Cliffs, N.J.: Prentice Hall, 1962.
Kalven, H. The American Jury. Boston: Little, Brown & Co., 1966.
McCart, Samue. W. Trial by Jury: A Complete Guide to the Jury System. Philadelphia: Chilton, 1964.
Nizer, L. The Jury Returns. Garden City: Doubleday & Co., 1966.

Bloomstein's discussion of the jury system includes historical and constitutional basis for the system, juror selection process, roles of judge and lawyers in jury trials, juror roles and capabilities, and an appraisal of the pros and cons of the system; the book's appendix provides individual state variations on the right to jury trials and a typical juror handbook and state jury law (both from New York State). Clear explanation of the roots, system, and issues makes Bloomstein's book a good starter on the topic. While Bloomstein covers some of the same ground as Joiner, the

[3]Sigler, Jay A. An Introduction to the Legal System. Homewood, Illinois: The Dorsey Press, 1968. pp. 72-76.

latter uses a different approach and attempts to document his conclusions with questionnaire results and other studies.[4]

The book by Jahnige and Goldman contains an interesting collection of studies of the federal judicial system, its judges, lawyers, interest groups, theory, and decisions. Of particular interest are the studies of the decisions, influences and attitudes of federal judges.

Louis Nizer is a leading trial lawyer and a highly entertaining legal writer.

Books can be quite helpful in providing lengthy, well documented information on the court and jury systems. Often some of the issues discussed are philosophical in nature and have not diminished with the passing of time. However, the debater must be aware of the slow process in writing and printing a book. Unless an issue discussed is perennial, it may be drastically changed or resolved by now. For example, both Joiner and Bloomstein advocate permitting states to reduce the number of jurors to six.[5] This has already been done and upheld by the U.S. Supreme Court.[6] Most books are quickly dated and should only be used to gain background information and understanding.

Reference books should also be checked for pertinent fact and figures on the topic. For statistical data on the jury system, consult the following books:

1970 Statistical Abstract of the United States, Washington: U.S. Government Printing Office, 1970. See pp. 152-153 (on court trials) and pp. 139-140 (essay on court system).
Book of the States, 1970-1971, Chicago: Council of State Governments, 1971. pp. 117-132 (judiciary section: state systems, courts, judges).

[4]While some of Joiner's tables, charts, and illustrative figures are interesting, keep in mind the limitations of the sample. Joiner's questionnaires were received by only a limited number of jurors and judges in New York courts.

[5]Bloomstein, op. cit., p. 127; Joiner, op. cit., pp. 82-83.

[6]The Case of Williams vs. Florida, Argued March 4, 1970, and decided June 22, 1970, in Vol. 399, U.S. Reports, p. 78.

World Almanac and Book of Facts, 1971, New York: World Telegram and Sun, 1971.
Information Please Almanac, 1971, New York: MacMillan Co., 1971.

Other reference books may be used for definitions, descriptions of the judicial process or comparisons with other systems. Some of the better sources include the following:

Black, Henry Campbell. Black's Law Dictionary. St. Paul: West Publishing Co. (Rev. 4th Ed.) 1968. (Widely accepted definitions.)
Lawyer's Desk Reference, Rochester, N.Y.: Lawyer's Coop. Publishing Co. (4th Ed.) 1971. (Describes different types of trials, includes some statistics; this source usually found in law school library.)
Encyclopaedia Britannica, 1970. Chicago: Encyclopaedia Britannica Co. See vol. 6, pp. 660-662 (describe the British and American Court systems) and vol. 13, pp. 159-160 (section on juries). Also, Encyclopedia Americana, 1970, provides similar information.
Britannica Book of the Year, 1971. Chicago: Encyclopaedia Britannica Co., 1971. (Contains significant events of the previous year.) Also, Americana Annual, 1971, provides similar information.
Lockhart, William B., Kamisar, Yale & Choper, Jesse H. Cases and Materials on Constitutional Rights and Liberties. Third Ed. St. Paul, Minn: West Publishing Co., 1970 (American Casebook Series--contains brief descriptions of Supreme Court decisions and opinions.)
Who's Who in America. Chicago: A. N. Marquis Co., 1970. (Contains biographical sketches of notable living Americans; leading lawyers, judges, and government officials are included. There is no special legal Who's Who.)

Newspapers and Periodicals: While books provide good background information, the debater will want to use more current sources for recent developments on the topic. The bulk of useable evidence is generally drawn from recent magazine articles and, to a lesser degree, from reliable newspapers.

Newspapers provide the most up-to-date accounts of current events. Of course, it would be wise to read newspapers from

different parts of the country; news reporting is not always unbiased and often reflects the interest or prejudice of the reporter, publisher, or section of the country.[7] The New York Times usually contains the most comprehensive coverage of news events. It should be read for any important court decisions or events affecting the topic. The "News of the Week in Review" is published by the Times every Sunday and includes authoritative comments on the events reported. The New York Times Index is quite extensive and should assist in finding an event quickly. Likewise, the London Times has a comprehensive index if, in rare instances for this topic, a British event should be examined.

Far greater use will probably be made of recent magazines and law reviews or journals. The Reader's Guide to Periodical Literature covers nearly all of the popular U.S. weekly, monthly, and quarterly magazines. Look under juries, courts, and judges for pertinent recent articles on the topic. As in the newspapers, it would be wise to read more than one news weekly, Time, Newsweek, and U.S. News and World Report. Again, the special interests and biases of these magazines have been well documented.[8] Longer and more authoritative articles are found in the monthly and quarterly magazines, such as the Harper's Magazine, Yale Review, Nation, Atlantic Monthly, Esquire, Fortune, and National Review. While these magazines often contain editorial slants and biases,[9] the articles are generally written by recognized authorities and are usually based on more extensive study than the news weeklies. Regardless of source, be sure to read any recent interviews of major lawyers, judges, law school professors and Justice Department

[7]An excellent examination of the different newspapers and their biases is given by Newman, Robert P., and Newman, Dale. Evidence. Boston: Houghton-Mifflin Co., 1968. pp. 131-150.

[8]Ibid., pp. 150-158. Again, see the examination of the news weeklies by Newman.

[9]Ibid., pp. 158-162.

officials, such as the recent interviews of Ramsey Clark[10] and Chief Justice Burger.[11] The International Guide to Periodicals should be used for foreign periodicals.

The following periodicals should be of particular use to the debater:

Current History, June, July and August 1971. These issues are completely devoted to the jury system. These articles provide excellent background information and expert opinions for valuable quotations.
Vital Speeches. Position speeches given by Ramsey Clark, Chief Justice Burger, former Chief Justice Warren, Attorney-General Mitchell, and others provide additional quotations.

Obviously, the use of a law school library would be quite advantageous for this year's topic. The more significant and authoritative articles are found in law reviews and journals. The larger public or college libraries would include a few of the publications with wider circulation, such as the following:

Journal of The American Judicial Society
American Bar Association Journal
American Law Review
Yale Law Review
Harvard Law Review

The larger law school libraries should include nearly all of the legal periodicals. The Index to Legal Periodicals provides a subject listing for the law journals and reviews. Look under juries, judges, courts, administration of justice, and military courts, for recent articles on the topic. Like the Reader's Guide, the Index has an annual publication and monthly supplements. Another useful index is the Ten Year Index to Periodical Articles Related to Law, which covers the same subjects and periodicals; no need to use both.

[10] Nation (December 7, 1970), p. 587.

[11] U.S. News and World Report (January 11, 1971), p. 68.

The law journals and reviews include three categories: law school journals, state bar journals, national association journals. The latter includes the American Bar Association Journal and the Journal of the American Judicial Society; both journals could be expected to reflect the interests of their judge and lawyer members.

It is rather difficult to evaluate the journals and reviews. Certainly, some legal periodicals are more widely circulated, respected, and used than others. Chester A. Newland's study[12] of the citing of journals in Supreme Court decisions indicated that the following journals were most frequently cited between October 1924 and October 1956:

Harvard Law Review (399)
Yale Law Journal (194)
Columbia Law Review (176)
Michigan Law Review (65)
Northwestern University Law Review (47)
Cornell Law Quarterly (32)
Law and Contemporary Problems (32)
Virginia Law Review (29)

While over 100 journals had been cited in Supreme Court decisions, the considerable influence of the Harvard, Yale, and Columbia journals is indicated by the repeated citings. However, in choosing articles to quote, do not rely too heavily on the journal's reputation. The position, experience, and reputation of the author of an article are more important. Due to their positions, comments by Chief Justice Burger, Attorney-General Mitchell, Ramsey Clark, etc., should be read in any law review. Most law school journals contain main articles (by legal authorities) followed by commentary articles. Often these comments are written by law students, rather than legal authorities or professors from the journal's law school. While law students have undergraduate degrees, they have not completed their law degrees and could not be considered legal experts!

[12]See Newland, Chester A. "Law Reviews and the Supreme Court", in Jahnige, Thomas, and Goldman, Sheldon. The Federal Judicial System. New York: Holt, Rinehart & Winston, 1968. pp. 326-333.

Unclassified Material: Besides books and periodicals, there are some publications especially written for the high school debate topic. There are numerous handbooks, which often try to do the research and even the thinking for the debater.[13] One of the better handbooks is given free of charge to high schools:

American Enterprise Institute
For Public Policy Research
1200 17th Street, N.W.
Washington, D.C. 20036

Probably the best compilation of material on the high school topic is called the N.U.E.A. Discussion and Debate Manual. Columbia, Missouri: Artcraft Press, 1971. For copies write to:

Committee on Discussion and Debate
Box 5152
University Station
Eugene, Oregon (There is a charge.)

Recommendations for improving the court and jury systems are given in a handbook published by the American Bar Association:

The Improvement of the Administration of Justice. Chicago: American Bar Association, (5th Ed.) 1970. ($3.00 charge, send to the Section of Judicial Administration, American Bar Association, Chicago, Illinois.)

A brief bibliography can be obtained from: The Institute of Judicial Administration, Inc., 40 Washington Square South, New York, N.Y. 10012.

[13]Generally, these handbooks include analysis of the topic, prepared evidence cards, a bibliography and other materials. Advertisements for the handbooks are usually sent in September or earlier.

The American Judicature Society has published five excellent reports on the topic:

Report #1, The Jury Process, A Bibliography, December 1968. (45¢)
Report #2, Annotated Bibliography on the Grand Jury, January, 968. (20¢)
Report #4, News Media and the Administration of Justice, August, 1970. ($1.10) Well documented.
Report #6, Pattern Jury Instructions, April, 1969. ($1.10) Well documented.
Report #22, Lawyers Speak the Truth About Counsel-Conducted Voir Dire, August, 1970 (60¢) Short, but several quotes from prominent lawyers.

All of these publications can be obtained from: American Judicature Society, 1155 East Sixtieth Street, Chicago, Illinois 60637. Order the reports by number and title.[14] It would also be worth the cost (in usable quotes) to request copies of the Society's journal:

Judicature, (Oct., 1967, Vol. 51, No. 3), pp. 88-92. (For U.S. Court of Appeals Judge Irving Kaufman's article, "A Fair Jury - The Essence of Justice"). (35¢)

Judicature, (March, 1969, Vol. 52, No. 8), pp. 328-333, 339-342. (For articles on "The Judge and Jury: Forensic Psychology" and "Pattern Jury Instructions"). (35¢)

Several government publications are also available. Be sure to order a free copy of the Library of Congress publication through your U.S. Senator or U.S. Representative. The publication is specifically compiled for the high school topic. Multiple copies can be bought from: The Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

[14]Before purchasing these reports, check to see if they are included in the N.U.E.A. Handbook. According to a letter from the American Judicature Society, the N.U.E.A. sponsors are negotiating for the publication rights.

20402. The following publications can also be obtained from the U.S. Government Printing Office (order by title and number):

67T. Rules of Civil Procedure for the United States District Courts, With Forms, as Amended to July 1, 1970. (50¢) Y4.J89/1:C49/7/970
36S. Analysis of Contents Manual for Courts-Martial, United States 1969, Revised Edition. D 101.22:27-2 ($2.25)
37S. Manual for Courts-Martial, United States 1969 (Revised Edition). Rev. 1969. D1.15:969. ($5.75)
12W. Compilation and Use of Criminal Court Date in Relation to Pre-Trial Release of Defendants: Pilot Study. 1970. C13.46:535. ($1.75)

Additional sources of information include the following:

Department of Justice
Constitution Ave. & 10th St.
NW Washington, D.C. 20530
John N. Mitchell, Attorney General
Jack C. Landau, Director of Public Information
Donald E. Santarelli, Associate Deputy Attorney General for Criminal Justice

Senate Committee on Government Operations
Room 3304
Senate Office Bldg.
Washington, D.C. 20510
John L. McClellan, Chairman

Senate Judiciary Committee
Room 2226
Senate Office Bldg.
Washington, D.C. 20510
James O. Eastland, Chairman

House Judiciary Committee
Room 2137
U.S. House of Representatives
Washington, D.C. 20515
Emanuel Celler, Chairman

The United States Supreme Court
Supreme Court Bldg.
Washington, D.C. 20543
  Warren E. Burger, Chief Justice
  William O. Douglass
  Thurgood Marshall
  John M. Harlan
  Harry Andrew Blackmun
  Byron R. White
  Potter Stewart
  William J. Brennan
  Hugo L. Black

Congressional Record
U.S. Capitol
Room H-112
Washington, D.C. 20515

U.S. Law Library
Library of Congress
10 First St., S.E.
Washington, D.C.
  Lewis C. Coffin, Librarian

Legislative Reference Service
Library of Congress
10 First St., S.E.
Washington, D.C.
  Lester S. Jayson, Director

Department of Justice
U.S. Marshall's Office
United States Courthouse
Washington, D.C.

U.S. Court of Military Appeals
Fifth and E Streets
Washington, D.C. 20442
  Robert E. Quinn, Chief Judge

Administrative Office of the
  United States Courts
Supreme Court Bldg.
1 First St., N.E.
Washington, D.C. 20543
  Ernest C. Friesen, Director

The Federal Judicial Center
Dolley Madison House
1520 H St.
Washington, D.C. 20005
Justice Tom C. Clark, Director

Your Senator
Senate Office Bldg.
Washington, D.C. 20510

Your Representative
U.S. House of Representatives
Washington, D.C. 20515

City or County Bar Association

THE FEDERAL AND STATE COURT SYSTEMS

In order to indict or defend the status quo, the debater should understand the present system of state and federal courts.

A dual set of courts exist in each of the states. While certain types of litigation permit a choice between the two court systems, most do not. In general, a case which starts in a state court will have its final hearing in the state system. After a ruling by the highest state court, an exceptional case may be appealed to the U.S. Supreme Court. Such cases are rare and must involve U.S. Constitutional considerations.

Few problems arise over jurisdiction in criminal cases. In nearly all crimes against the United States, the federal courts have exclusive jurisdiction. Likewise, in crimes against the state, the state courts possess nearly exclusive jurisdiction. However, cases concerning federal officials may be placed in the federal courts.

Jurisdiction in civil matters is not as clearly defined. State courts are often used for trying federal civil matters. Federal courts usually try cases of civil matters involving citizens of two or more states and exceeding $10,000, even if state law is involved. In such cases, the federal court must apply the state laws to the civil case. State courts handle the civil cases under $10,000. Of course, state courts do not have jurisdiction outside state boundaries. Territorial boundaries similarly limit the jurisdiction of district and county courts. Despite the complications, the two court systems cooperate with only a few jurisdictional disputes.[1]

[1] For more detailed descriptions of the federal and state court systems, read a standard state and local government textbook such as Ross, Russell M., & Millsap, Kenneth F., State and Local Government and Administration. New York: The Ronald Press Co., 1966, pp. 299-323.

The influence of the court may extend beyond the judicial branch. The courts have the responsibility of ruling on the constitutionality of laws or policy changes enacted by the legislatures or executed by the executive. If a judge determines that a law or its method of execution does not conform to the state or federal constitution, he may declare the law unconstitutional and make it null and void.

In order to understand the jurisdiction of the courts within the state or federal court systems, the different types of lawsin the United States should be recognized. The three types include private law, public law, and criminal law. While there are no standard legal definitions, the highly regarded Black's Law Dictionary[2] and various introductory law textbooks agree in their basic descriptions of the laws.[3]

Private law governs the relations between private citizens, resolving their conflicts or disputes. The disputes involve property, wills, contracts, or similar financial concerns. Decisions are generally governed by legal statutes and previous court cases (which may act as precedent-setting cases).

Public law concerns the operation of the state or federal government or its agencies and their relationships to private citizens. Public law provides a check on the organization, duties, and powers of the government. The state acts as either the plaintiff or the litigant before a legal tribunal. Decisions are based on the federal or state constitutions and legislative statutes. In "constitutional law" cases, the dispute may concern the extent

[2] Black's Law Dictionary. 4th Edition. St. Paul: West Publishing Co., 1951.

[3] More detailed descriptions of the three types of law can be found in Sigler, Jay A. An Introduction to the Legal System. Homewood, Illinois: The Dorsey Press, 1968, pp. 16-19. Also read Ross, op. cit., p. 302.

of the state's powers or the individual's rights. In all cases, the U.S. Constitution is superior to the other factors and types of law. Of course, much of the Constitution is subject to interpretation and major judicial interpretations (especially by the Supreme Court) have altered the document's meaning through the years.

Criminal law concerns the safety and order of the state and its citizens. The state acts as plaintiff or prosecutor in criminal cases. Before a criminal case may go to trial, an indictment must be obtained by the state prosecutor from a grand jury or a judge.[4] The state prosecutor seeks an indictment when a violation of a criminal statute has occurred. The most serious crimes include treason, murder, burglary, and rape. Two other main divisions of crime include felonies and misdemeanors. Usually, felonies are defined as crimes for which the penalty includes a prison sentence of at least one year. Misdemeanors are crimes having penalties of shorter jail sentences or fines.

A brief outlining of the specific state courts and their order (or place in the hierarchy) should help clarify the state court structure and jurisdiction. Except for the highest state court, the state legislatures are generally responsible for structuring the court systems.

On the lowest rung of the state court system are justice of the peace, municipal and police courts. The jurisdiction of a justice of the peace usually does not exceed county boundaries and is often more limited, depending on the state. Most states do not require candidates for the post to have any legal training, and he is always popularly elected. Fortunately, he is usually restricted to civil cases concerning less than one hundred dollars and to criminal cases (usually misdemeanors) in which the penalty

[4] Three-fourths of the states require that the indictment be obtained from a grand jury, which listens to the evidence and issues a "true bill" if they believe that the evidence warrants prosecution. One-fourth of the states permit indictments obtained from a judge. For further details, read Ross, op. cit., pp. 312-313.

is less than one hundred dollars in fines and not more than thirty days in jail. Generally, the justice of the peace receives his pay from the assessed court costs. As might be suspected, the justice of the peace courts are held in rather low regard. Local pressures and financial rewards could be expected to impair the honesty and fairness of the decisions rendered from such courts.[5] No detailed records of the cases are kept. Due to the poor reputations of the courts, Missouri and New Jersey have already abolished the justice of the peace courts. The American Bar Association has advocated its abolition for over twenty years.[6] Despite these indictments, the largest number of people appear before this court annually. According to a statewide attitudinal survey conducted by the State Bar of Texas in 1970, these two lower courts were thought to be inferior compared to other courts. This response was shared by general public, age 17 and over, and by lawyers. Details of this survey are available from State Bar Headquarters in Austin.

The municipal or police (or traffic or numerous other titles) courts are found in urban areas and are nearly as poorly regarded as the justice of the peace courts. Many of the same characteristics prevail. Usually the judges are paid by fees (from cases heard) instead of a salary. The jurisdiction is usually restricted in territory and case type about the same as the justice of the peace. The prime difference occurs in the greater volume of cases and the long delays which exist in some of the larger cities.

An affirmative team could certainly construct a strong indictment against these three inferior courts. However,

[5] Among other specific indictments against the justice of the peace courts, see Graves, W. Brooke. American State Government. 4th Edition. New York: D.C. Heath Co., 1950, Chapter 17. Also, see Ross, op. cit., pp. 310-311, and Sigler, op. cit., p. 70.

[6] Among others, see The American Bar Association, The Improvement of the Administration of Justice. 4th Edition. 1961, pp. 95-100.

the likelihood of extending the use of juries to these courts seems remote. The large number of cases heard and the rather limited amount of fees collected from such cases would seem to make it financially unfeasible to use jurors for such cases. A more qualified judge, paid a salary from tax dollars, would seem to be a more plausible answer to the problem.

Except for misdemeanors and civil cases involving only a few hundred dollars, the original jurisdiction for most cases is in the general trial courts (called by a variety of names, such as district, state, superior, county, circuit, or common pleas courts).

Of course, cases from the police, municipal or justice of the peace courts may be appealed to the general trial court. The judge for these courts is paid a salary and is nearly always a qualified lawyer with at least five years of practice.[7] Like the inferior court judges, general trial court judges are usually popularly elected with terms of four to six years. A written transcript of the trial proceedings is always kept. Normally the defense may choose to have the case heard by a jury or only by the judge. Whether tried by judge or jury, the decision is supposed to be based on the law as applied to the facts or evidence of the particular case. The decision may be appealed by either the plaintiff or the defense to the next higher court.

In the more populated states, the next highest court is the intermediate appellate court or court of appeals. Only fourteen states maintain such a court or courts.[8]

[7] Council of State Governments. The Book of the States, 1968-1969. Chicago: Council of State Governments, 1969. pp. 107-108. (Hereafter, cited as Book of the States, 1968-1969.)

[8] The states include Alabama, California, Florida, Georgia, Illinois, Indiana, Louisiana, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and Texas.

These courts have no original jurisdiction; they hear criminal or civil case appeals from the lower courts. Usually courts of appeal include three or more judges and their decisions are rendered by a majority vote. The procedure differs somewhat from that of the trial courts. The decision is largely based on a review of the lower court's case record and on the additional arguments and briefs presented by the opposing lawyers. As in the lower courts, the judges are subject to popular election in eleven of the fourteen states with appellate courts and the terms average around eight years. Of course, the appellate court decisions may be appealed by either party to the state court of last resort.

The final step for nearly all cases having state jurisdiction is the state court of last resort, usually called the state supreme court.[9] As in the lower courts, nearly two-thirds of the states have popular elections of their supreme court judges with terms ranging from two to twenty-one years; and the remaining one-third of the states select their judges by elections in the legislature or through appointment by the governor.[10] The number of supreme court judges range from only three in Alaska, Delaware, and Nevada to nine judges in Iowa, Mississippi, Oklahoma, Texas and Washington; most states have five or seven supreme court judges. Likewise, wide differences occur in the salary ranges and length of

[9] The terminology differs considerably from state to state. New York, Kentucky, and Maryland refer to their general trial courts as "supreme courts"; their intermediate courts are called "supreme courts of appeals" and their last resort court is merely called "the court of appeals". Virginia and West Virginia call their highest court "the supreme court of appeals"; while Connecticut uses the title of "the supreme court of errors". For valid comparisons of state courts, it is necessary to recognize the differences in terminology and use the same court levels for such comparisons.

[10] See the listing of selection method, number of members, term length, and salary for supreme court judges in each state in The Book of the States, 1968-1969, p. 117.

terms. Except for Oregon, all of the states have provisions for removing supreme court judges by impeachment by the state legislature. As in the intermediate court, the state supreme court's jurisdiction is mainly over civil and criminal cases appealed from lower courts.[11] The decisions are based on reviews of the lower court proceedings and any new arguments given by the lawyers. All of the fifty states print their supreme court decisions, in an annual publication, which includes the case title, litigants, majority and concurring opinions, and dissenting opinions. In very rare cases, involving U.S. Constitutional considerations, an appeal may be made to the U.S. Supreme Court.

As indicated in the previous descriptions, popularly elected judges are the prime decision makers in the state courts. Juries are employed only in the general trial courts in which cases are usually initially tried. Of course, criminal cases require a preliminary indictment by a grand jury before the trial in most cases. An affirmative might advocate that the right to a jury trial be extended to the appeals or supreme courts. However, such a change would probably result in a duplication of the procedure presently used in the trial courts and would probably be considerably more expensive than the current judge-system. Considering the long delays already existing in the trial courts, an approach using jury-trials for appeals would seem to be unrealistic. Reductions in the use of jury-trials would seem to be a stronger affirmative approach to the topic.

Unlike the state court systems, the federal system is unified and the judges are generally better paid and qualified. There are only three steps in the federal hierarchy: The United States District Courts, the United States Courts of Appeals, and the United States Supreme Court. While the Supreme Court was the only one specifically mentioned in the Constitution (Article III), Congress established the other two federal courts. All three courts adhere to the Constitution's definition of their jurisdictional inclusions:

[11] Texas and Oklahoma are exceptions. Both states provide separate, three-judge tribunals for final appeals in criminal cases.

"All cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made...under their authority."[12]

This statement provides the basis for federal judicial authority.

At the lowest rung of the federal court system are the ninety-two United States District Courts with over three hundred judges. The original jurisdiction for federal criminal or civil cases[13] is given to these courts. As in the general trial courts of the state, the defendant may choose to have his case heard by a jury or only the judge in the U.S. District Court.

In 1969, nearly half (47.9%) of the U.S. District Court trials had juries. While a little more than one-third (36.4%) of the defendants in civil cases choose juries, two-thirds (66.2%) of the defendants in criminal cases selected jury trials.[14] A check of the years, 1945-1969, reveals that these figures are typical; the percentage of defendants choosing jury trials was constant in both civil and criminal cases.[15] Over four-fifths (81.7%) of the defendants were convicted in 1969 criminal cases. However, most (86.3%) of those convicted had already pleaded guilty.[16]

Of the civil cases commenced in U.S. District Courts, only one-tenth (11%) actually reached trials. Most of the cases

[12] U.S. Constitution, Article III.

[13] There are some exceptions in civil cases in which both federal and state jurisdiction exists. In such cases, either the federal or state court may be used.

[14] See the 1970 United States Statistical Abstract, p. 153.

[15] Ibid., p. 153.

[16] Ibid., p. 153.

were terminated before any court action (38%), before the pre-trial (33%), or during the pre-trial (15%).[17] Cases of personal injury from automobile accidents (usually involving insurance) represented the largest number and highest percentage (17.5%) of civil cases reaching trial.[18] Of course, in both criminal and civil cases, appeals can be made by either the plaintiff or defendant to the U.S. Court of Appeals.

On the intermediate level are the eleven United States Courts of Appeal. The seventy-eight judges of these courts listen to criminal or civil appeals from the U.S. District Courts (or from some federal agencies or departments). Three-judge panels are usually employed; sometimes, as many as nine judges listen to a significant case. The median amount of time it takes from filing an appeal petition to final disposition is 8.3 months.[19]

At the top of the federal court system, the United States Supreme Court has both original and appellate jurisdiction powers. In practice, the Supreme Court nearly always limited its cases to appeals from lower courts, except in cases between states. There are three writs by which a lawyer may attempt to gain a hearing for his client. First, he may try an appeal (in which, for acceptance, the court has expected the case to involve a significant federal question or issue). Second, he might try to show that a state law conflicts with the federal law or Constitution. Third, if a federal law or treaty can be questioned as to its Constitutionality, the likelihood of a hearing is increased.[20]

Besides the three major courts in the federal system, there are specialized federal courts, such as the Tax Court, the United States Court of Military Appeals, the Customs Court and the Court of Claims. All of these courts use a judge or panel of judges for their decisions; none use the jury system.

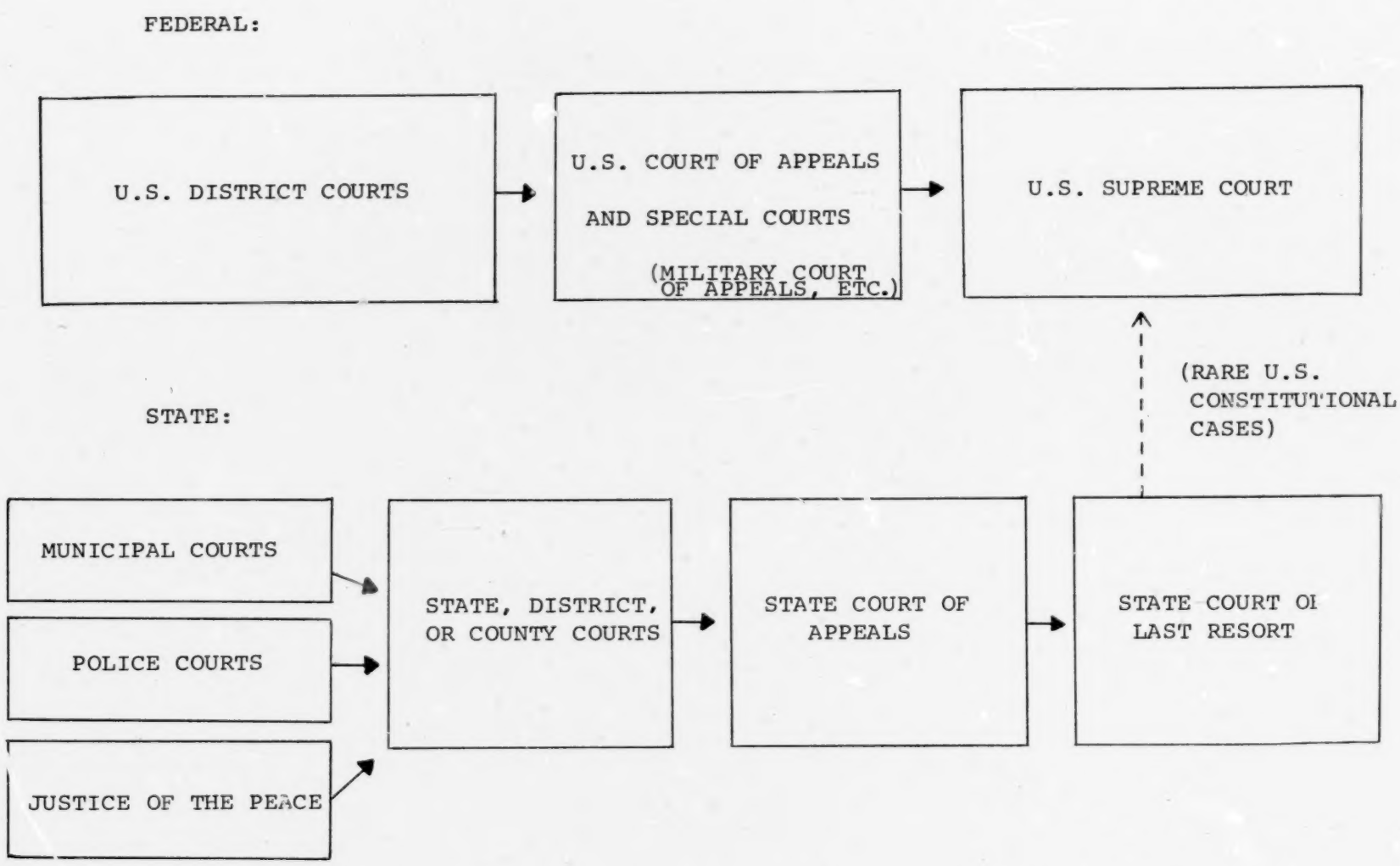
[17] Ibid., p. 154.

[18] Ibid., p. 154.

[19] Ibid., p. 154.

[20] See Sigler, op. cit., pp. 74-75.

STATE AND FEDERAL COURT SYSTEM



THE JURY SYSTEM

Historical Origins: In order to understand the development of our present jury system, this section will briefly trace some of the highlights and practices in earlier jury systems.

Forerunners of the jury system can be traced back to the ancient Greek civilization. Drawing lots, the Greeks picked six thousand citizens over thirty years of age and arranged them into small groups (called "decuries"). Again by lots, civil and criminal cases were heard in a particular decury and court. In this way, no one had advance knowledge of the jurors ("dikasts") and, thus, bribery or influence attempts were minimized. Likewise, the size (usually two to five hundred jurors) of each decury tended to discourage corruption.

The disadvantages of such large juries would be predictable. Since little compensation was given, the jurors were generally drawn from the poor, uneducated segments of the populace. The decisions were often based on resentment and emotion, rather than reason and principles.[1]

Our present jury trials can more properly be traced from our English heritage and the English common law. Despite the crude practices, the 1066 A.D. Norman invasion of William the Conqueror provides a starting point. Two common methods of trials were being used by the Saxons. First, trial by oath-taking ("compurgation") involved several (usually twelve or more) testimonies by sworn persons as to the truthfulness and good character of the plaintiff and good character of the plaintiff or defendant. If the defendant could not find enough oath-takers or was not thought to be truthful, he was often forced to submit to the Ordeal. While the Ordeal supposedly appealed to God for protection of innocent, rather cruel and savage forms were devised.

[1] For a clear, detailed description of the ancient Grecian juries, the modifications into a judge and jury system under the Romans, and the spread of the jury system across Europe and Scandinavia, see Bloomstein, Morris J. Verdict: The Jury System, New York: Dodd, Mead, and Co., 1968. pp. 2-9.

Common folk usually underwent hot or cold water tests. They were declared innocent if they remained unharmed by boiling water or sank to the river bottom in cold water. If they were hurt by boiling water or floated in the cold water, they were guilty. Nobility usually underwent the hot iron or coals test. They walked over hot coals or held a red-hot iron for several steps. If the burns healed in three days, they were judged innocent; if not, guilty. Later, the Normans added trial by combat, in which justice was determined by various duels (a la Ivanhoe!). The forerunner of our grand juries was also convened by the Normans. Tribunals were formed to accuse offenders and place them on trial.[2]

The 1166 A.D. decree of Henry II was largely responsible for establishing the right to trial by jury. Under the reign of Henry II, jury trials became common and defendants were given the choice between trial by battle or before twelve jurors ("recognitors").[3]

In early English trials, the role of the juror differed from today. The jurors were initially considered witnesses of the fact. Under Edward I, jurors without personal knowledge were added to the jury. During the rule of Edward III, around 1350 A.D., the jurors with personal knowledge of the case became witnesses and the decision was determined by the personal knowledge of the case or opponents. Around 1200 A.D. when the juror's role was that of witness, the attaint was established to discourage false verdicts. If the authorities believed that a jury had given an improper verdict, they could have a second jury deliberate on the decision of the first jury. If the first decision was overturned by the second jury, the first jurors were considered to have been guilty of perjury (since they

[2] Again, a detailed account of the period is given in Ibid., pp. 10-16.

[3] Plunckett, Theodore. A Concise History of the Common Law. Boston: Little, Brown & Co., 1956. p. 19.

were witnesses) and their properties could be forfeited. Despite the fact that jurors were no longer witnesses by 1350, the attaint was continued until 1670.[4]

Likewise, clear functions for juries developed from the early English courts. In 1194 twelve knights were given the duties of both accusing and trying a criminal suspect. In 1215, two juries were formed; one acted as an accuser (grand jury) and the other tried the case (such as a petit jury).[5]

American Revisionists:

During the settling of North America, many of the concepts and practices of the English jury trials were transported to the New World. Of course, the difficult circumstances in the founding years prevented complete implementation of the English system. For example, in 1638 in Massachusetts, the shortage of able men led to reducing the number of jurors to six in minor matters and to a lack of division between grand jury.[6] Despite the modifications, the American legal system clearly reflected its English heritage.[7]

In 1734 the trial of John Peter Zenger, publisher of New York's Weekly Journal, helped established the independence of the jury. The publisher was brought to trial for his newspaper attacks on the royal governor; these criticisms clearly violated the criminal libel laws of the state (established by English rule). The judge instructed the jury to decide only whether or not the statements about the governor had been printed. In clear defiance of the

[4] Bloomstein, op. cit., pp. 16-18.

[5] Ibid., pp. 18-19.

[6] Ibid., pp. 21-22.

[7] Sigler, Jay A. An Introduction to the Legal System. Homewood, Ill.: The Dorsey Press, 1968. p. 11.

judge's instructions, the jury accepted the defense's plea for freedom of the press and declared a "not guilty" verdict.[8]

The Zenger case involves an important issue that might still be debated today. Should a jury be permitted to disregard the legally enacted laws governing the case? Or, should a jury be expected merely to apply the law to the facts of the case in arriving at their verdict? On the side for giving the jury free reign, the unfairness of Crown-imposed statutes in 1734 and later similar violations of personal rights might be cited for justification. On the other side, is the jury qualified to judge the merits or defects of a law? Without adherence to laws, the verdicts would become more subjective and partial, rather than objective and impartial. Of course, arguments on both sides could be increased and extended.

The 1765 publication of William Blackstone's Commentaries on the Common Law in England provided the colonists (as well as Englishmen) with the first actual compilation of the common laws of England. Previously, principles established by earlier decisions (precedent cases) had to be rediscovered in the dusty court records.[9] Blackstone's book was regarded as the legal textbook for the American jurists.[10] Its principles also served to reenforce the right to trial by jury in the minds of the founding fathers.

In the October, 1965, Declaration of Rights (of the colonists as Englishmen), the New York convention delegates emphasized their right to tax themselves and their right to trial by jury.

[8] Bloomstein, op. cit., p. 23.

[9] Ibid., pp. 23-24. William B. Blackstone was a judge of the Court of Common Pleas.

[10] Sigler, op. cit., p. 230. Also, see the numerous letter collections of the important lawyers and political figures in the Revolution Era. Both Thomas Jefferson and his teacher, George Wythe, held Blackstone's book in very high regard. The book was later used as the legal bible in the studies of both Patrick Henry and Henry Clay under the tutelage of Wythe.

The 1776 Declaration of Independence specifically complained of the Crown-appointed judges and their attempts to control the American juries.

Constitutional Rights to Jury Trial:

The United States Constitution[11] and Amendments contain the following statements on grand juries and trial by jury:

> "The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed..." (U.S. Constitution, Article II, Section 3, Clause 3)

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." (U.S. Constitution, Amendment V)

[11] Despite the complaints in the Declaration of Independence, the original Constitution provided for jury trials only in criminal cases in Federal courts. No mention was made of State jury trials, nor grand juries, nor jury trials in civil cases. See the U.S. Constitution, Articles I-VII. The Amendments containing the additional rights to grand jury indictments and state and civil jury trials were not ratified until 1791. Before the adoption of the amendments (Bill of Rights), Thomas Jefferson and Patrick Henry attacked the omission of the provisions from the Constitution while not opposing the right to jury trials; Alexander Hamilton asserted that the state constitutions already contained their own provisions, the states differed too much on the issue to gain consensus, and further references were unnecessary. See the Federalist Papers.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; and be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. (U.S. Constitution, Amendment VI.)

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." (U.S. Constitution, Amendment VII)

"Nor shall any State deprive any person of life, liberty, or property, without due process of law." (U.S. Constitution, Amendment XIV)

Notice that Article III and the first ten amendments applied only to federal courts, not state courts. The fourteenth amendment, adopted in 1868, provided some legal control over the state court systems. The concept of "due process" has commonly included the right to a jury trial.[12] Except for Louisiana, each of the original and later states guaranteed the right to a jury trial in their constitutions.[13]

[12] Among others, Justice Fortas states "'Due process' requires that the states accord the right of jury trial for all but petty offenses" in his concurrence opinion in The U.S. Supreme Court Case of Duncan vs. Louisiana, 1968, found in Lockhart, William B.; Kamisar, Yale; and Choper, Jessie, H. Constitutional Rights and Liberties, St. Paul, Minn.: West Publishing Co., 1970. p. 160.

[13] See more specific details on state constitutional guarantees to right of trial by jury in Joiner, Charles W. Civil Justice and the Jury. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1962. p. 58. Also, Bloomstein, op. cit., pp. 30-38.

Louisiana guaranteed the jury trial by legislation, but did not extend the right to all criminal offenses until 1968 after the Duncan vs. Louisiana decision.[14]

Louisiana's state constitution omitted the guaranteed rights to trial by jury largely due to the different legal system under which the state had been governed. Unlike most of the states (which developed under the English heritage), Louisiana had been governed by France which used civil law, rather than common law. The difference between the two legal systems should be understood.

Common Law and Civil Law:

The two different legal systems used in Western civilizations are common law and civil law. The common law tradition is found in most of the English speaking countries, including Great Britain, the United States, New Zealand, and the other former British colonies. The civil law tradition has developed from Roman law and is found in nearly all of the European countries, including France, Italy, Spain, Germany, Portugal, Holland, and the former colonies of the European mother countries.

The English common law has been largely derived from practice (by incorporating local customs and court decisions into basic principles or precedents). The civil law systems based on codes, or legal statutes; the judge simply applies the statute to the case. In practice, the differences between the two systems are not as great as would probably be expected. Legal decisions in countries under each tradition depend partially on statutes and partially on precedent.

Of course, the civil law courts nearly always use judges and presumably, base decisions on statutes; precedent for interpretation of the statutes often enters into decision, too. The common law courts more frequently use juries for decisions.

In giving the opinion of the U.S. Supreme Court, Justice White stated "because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases" in Duncan vs. Louisiana, 1968, cited in Lockhart, op. cit., p. 106.

Usually, precedent cases have a bearing on the decision; but use of statutes has been increasing.[15]

The Present U.S. Jury System:

A criminal case usually includes three major steps:

1. Grand Jury Indictment. The state prosecutor must must obtain a grand jury indictment. After listening to the evidence, the grand jury issues a "true bill" if they believe that there is sufficient evidence that the accused may be guilty of the crime. The grand jury is usually selected from voter registration lists (in the same manner as petit jurors). About one-fourth of the states permit information indictment. For this indictment, the prosecutor merely presents his evidence to a judge who issues an indictment without convening any grand jury.

   This indictment method is quite controversial and would certainly seem to provide a legitimate area to indict or advocate under this year's debate topic. Likewise, the use of grand juries for civil cases or their elimination for less serious criminal cases might become cases.

2. Impanel Petit Jury. (usually 21 members) The people called for jury duty are usually selected from recent voter registration lists. Of course, judges and lawyers are not permitted to serve on juries and various other professions are exempted; the long list of exemptions includes physicians, dentists, clergyment, teachers, government officials (state, federal or city) and various other professions. The prospective jurors are sent a summons to appear at a specific time and date. During a pre-trial screening of jurors (called "voir dire"), lawyers for both sides have an opportunity to question each prospective juror. If there is any reason why a juror may be favorable toward

[15] A clear, detailed description of both systems is given by Sigler, op. cit., pp. 11-14.

or prejudiced against one side, the opposing lawyer indicates the cause for dismissal and the judge normally will dismiss the juror from that case. In most states, the lawyer is allowed to dismiss some jurors (usually maximum of 5 or 7) without any reason (called "peremptory challenges").

For this year's debate topic, several issues could concern the voir dire period. Considerable delay and lost manpower (prospective jurors) occurs during this period. Some lawyers are probably able to use their questions to place the juror on their client's side. Possibly the reasonableness of challenges without cause might be attacked.

3. Trial Format. After the jury is formed and sworn, the trial is ready to begin. A typical trial order is as follows:

   A. Prosecutor presents case against defendant. Prosecutor examines state witnesses, and defense lawyer cross-examines the witnesses.
   B. Defense lawyers present their case or disprove prosecution case. Defender examines defense witnesses, and prosecutor cross-examines.
   C. Any recalling of witnesses and cross-examination occurs.
   D. The closing arguments for both defense and prosecution are made.
   E. The judge instructs the jury (about the rules of evidence, the laws applicable to this case, and the duties of the jury).
   F. The jury is placed into seclusion to deliberate verdict. Voting and discussion occur until a unanimous verdict is reached. (If none can be reached, a "hung jury" is declared and a new trial with new jurors is usually arranged.)
   G. The jury foreman delivers verdict and everyone reassembles. The bailiff announces the decision.
   H. If the decision is "not guilty", the defendant is set free. If the decision is "guilty", the judge passes sentence. However, in many cases, the defense requests a new trial to an appellate court. If the request is denied, the judge sentences the defendant and the sentence is carried out.

As in the initial steps, several debate issues could be directed toward the trial format. In his instructions to the jury, should further limitations be placed on the judge? Or, should the instructions be increased or standardized throughout the country? The unanimous verdict might be reduced to three-fourths, two-thirds or even majority decision; the cost of hung-juries or even of juries taking long hours to persuade one dissenter could make a strong indictment. Whether the judge or jury should pass sentence is another possible issue.

Except for minor revisions, the procedure for a civil case is nearly the same. Of course, no grand juries are used for civil cases.

TOPIC ANALYSIS

Prior to debating any topic, it is necessary to understand the intended meaning of the proposition and the possible issues which might arise. This section will provide an interpretation of the proposition and a brief outlining of several possible issues that could be developed. Of course, the interpretation and outlined issues are only suggestions, and should not be considered as blinders or limitations on the topic. No specific, well structured and documented affirmative case will be presented. Such handbook-type cases are usually well known throughout the circuits by publication of the handbook. No debate handbook can or should do the debater's thinking for him. This analysis attempts to provide a variety of approaches and directions which might be expanded and developed into cases for this year's topic.

Definition of Terms: The intended meaning of the 1971-72 Debate Proposition may be deciphered by defining its important words or phrases. As a whole, the proposition is phrased:

> "Resolved, that the jury system in the United States should be significantly changed."

The Jury System: As indicated in earlier sections, "jury" in the United States may refer to the grand jury or the petit (trial) jury. Hence, "the jury system" would apparently refer to the procedures, functions, and practices involving the grand jury or petit jury. Some debaters may try to use the word "system" as a means of expanding the topic beyond just the jury itself. This may be justified if the expansion does not exclude the jury completely. It may be argued that the "jury system" properly includes components (judges, lawyers, juries, and trials) which make up the petit jury system. The first definition of "system" in the American College Dictionary refers to a "combination of things or parts forming a complex or unitary whole."[1] If an affirmative case improved part

[1] The American College Dictionary. New York: Random House, 1964. p. 1230.

(judge or lawyer functions) of the system, it might be argued that jury verdicts would improve. Hence, such an improvement would improve the jury system. Of course, some teams may try to use cases which only affect the judge or lawyers. It would seem reasonable for negative teams to attack the topicality of such cases. It could be argued that affirmative cases should at least affect the petit jury or grand jury in some way.

in the United States: This phrase seems to restrict affirmative proposals to changes in the system in this country. While court systems in other countries may be used for analogies, comparisons or contrasts, the change in the country's system appears to be demanded in the proposition. Some teams might try to include U.S. territories and possessions in the definition.

should be: Nearly all debate propositions use the word "should". The term is generally defined and accepted to mean "ought to, but not necessarily will".[2] No affirmative team can be expected to insure their proposal's acceptance. The term does at least imply that the affirmative is expected to demonstrate his proposal would be the most desirable one for this particular time. Likewise, constitutionality is not a legitimate negative attack. If the change is desirable, the Constitution can be changed.

significantly changed: These terms will probably become the most disputed ones in this year's proposition. When does a change become significant? Unfortunately, the word "significantly" does not lend itself to any clear-cut, practical definition. What may seem to be a vital and important change from the affirmative's view, may seem minor to the judge and undoubtedly to the negative. To avoid dull, issue-less, bickering over terms, affirmative teams should use cases which clearly provide important changes. Importance is usually indicated by quantification (number affected or involved) or by principle (issue involved). It might be argued that a proposal must include a "structural" change

[2] Among others, see Wood, Roy V. Strategic Debate. Skokie, Illinois: National Textbook Co., 1968. p. 14.

for the system to be "significantly changed". Regardless of term, negative teams could argue that non-structural changes could be made under the present system; therefore, the change would not be significant.

Analysis of the Issues: With the numerous procedures and factors involved in the topic, several possible directions for cases may be explored. For most of the case possibilities, two questions should be asked: (1) Would the change enable a just (fair) verdict? and (2) Would the changed system be efficient (cost or time)? Of course, efficiency and justice may not always be achieved together. A society probably would not be able to financially afford a system of justice that is completely fair and just in its verdicts. The court and investigative costs would probably be prohibitive. Likewise, the most efficient (cost and time-wise) system would probably involve eliminating all trial juries and grand juries; while time and cost would be greatly decreased, such a change would probably decrease the Anglo-American justice by peer judgment.

As in other propositions, the standard stock issues should still be applied to test affirmative cases:

1) Is there an inherent need to change the present system? (need-plan cases)

   or

   Is the proposed change desirable? Would the change provide significant advantages over the present system? (comparative advantage cases)

2) Is the change practical? Will the change correct or significantly reduce the need? (need-plan case)

   or

   Will the change actually produce the desired results? (comparative advantage case)

   and

   Will the disadvantages accrued from the plan outweigh the advantages?

After brief commentaries on some of the issues, a listing of case possibilities will be given. Significant Supreme Court decisions will be included. Admittedly, sometimes the inclusion of a case under one category as opposed to another is arbitrary.

Defects in the Jury System: Affirmative teams should be able to build strong need cases for this proposition. There are several faults in the present system that should not be too difficult to document. Juror qualifications (or lack of) may be indicted in several ways. It may be argued that many of the most qualified jurors have been exc sed in the voir dire examination. Secondly, the long backlog of jury trial cases and the rather large number of hung juries and long jury deliberations provide efficiency indictments. Thirdly, cases indicting press and government influences on juries are quite current with the Manson case in California and the Guzman-Lopez case in Texas. How far should a trial judge go to halt outside influences on the jury? When Charles Manson waved an incriminating newspaper in the courtroom, the act was ruled not "reversible error" since the self-incrimination was voluntarily committed by the defendant. Defects in the jury system include:

1) Jurors are unqualified to make just verdicts.
   a. Jurors lack proper knowledge of application and admissibility of law and/or evidence.
   b. Jurors lack understanding of technical case areas, such as medicine, psychiatric care, etc.
   c. Jurors often rule by emotion, prejudice, and sympathy.
   d. When in doubt, jurors tend to give light sentences, rather than acquittals.

2) Long delays prevent "speedy" trial right.
   a. Court dockets are flooded with claims.
   b. Often juries fail to reach verdict ("hung jury") after long deliberations.
   c. Often long delays result in lost evidence or witnesses.
   d. Often long delays serve as financial hardship on defendant.

3) The government and press serve as unfair influences on jurors.
   a. Newspaper pre-trial publicity is often read by jurors.
   b. Government influences result in unfair advantage for prosecution.

4) Use of juries promotes inefficiency.
   a. Considerable time is wasted by lawyers in voir dire and trial.
   b. Increased number of required procedures result in greater cost and time.
   c. Long jury deliberations and hung juries result in wasted time and cost.
   d. Financial losses to public and jurors result.

5) There is no uniformity among the state court systems.

6) Possibility of error is increased in jury trial; convicted criminals are more likely to be freed due to technical errors in jury trials.

Jury System Retention Advantages: The reasons for retaining the jury system are largely historical. The United States followed England in adopting the jury system as the most just method. Of course, the use of the jury as a check on the judge was provided in the Constitution. Some of the better reasons for retention of the present system include:

1) The jury system is valuable part of the check and balance court system.
   a. The jury acts as a check on the judge.
   b. Jurors tend to be more compassionate than judges.

2) The jury system is most just.
   a. Juries protect the accuseds' rights to a public trial.

3) Jury decisions insulate elected judges from political pressures and influences.

4) Jury decision increases and sustains public confidence in the legal system.

5) Jury duty tends to educate juror in legal matters.

6) Jury decisions provide for nullification of unfair and unjust laws.

7) Press coverage can be withheld from a jury (by judge) under present system.

8) The present system provides for appeals to verdicts.

9) Jury duty offers citizens opportunity to participate in government.

There are three obvious approaches to changing the jury system:

1) Replace the trial jury with judge, commission, or other means.

2) Replace or merely eliminate the grand jury, and

3) Correct or improve the grand jury or trial jury.

These approaches will be divided into the significance of the changes.

Procedural Changes: There are some changes that would effect the operation of the jury system. They include:

1) Improvement of jury makeup
   a. Size increase or decrease (latter is current trend)
   b. Better qualifications
   c. Increased compensation
   d. Cross-section assurance

2) Procedure for selecting jurors
   a. Selection by commission
   b. Voir dire conducted by judge or limited charges
   c. Reduction in number of jurors called
   d. Improved cross-sectioning (by area, occupation, socio-economic, age, sex, race, nationality factors)

3) Less than unanimous verdicts for acquittals and convictions

4) More alternatives to "guilty" or "not guilty" verdicts.

5) Better instructions to jurors
   a. More specific explanation of all possible verdicts.
   b. Include possible consequences of verdicts, such as insanity verdict.

6) Peremptory challenges should be eliminated
   a. The defendant is at a disadvantage since the state prosecution generally has a larger budget and staff to investigate prospective jurors.
   b. It discriminates against the poorer defendant who has less money to pay for investigations of jurors.

7) Prospective juror lists should not be available in advance to either the prosecution or defense.

8) Streamlining procedures would accelerate trials by jury.
   a. Two or more witnesses might testify together if their testimony is linked.
   b. Affidavits could replace court appearances with consent of both parties.
   c. Special cross-examiners could replace the prosecution and defense lawyers in voir dire.
   d. Grand juries could be appointed or elected for extended period of time.

9) Increase or decrease jury sentencing.

Substantive Changes: Certain changes affect the defendant's right to a jury trial. These "substantive changes" tend to be more significant since they increase (expand) or decrease (curtail) the right to a jury trial. For example, the recent Calley trial emphasized the continued denial of jury trial rights to members of the armed forces. Likewise, a recent (June, 1971) Supreme Court decision upheld a lower court's refusal to permit the right to a jury trial by a juvenile; the court ruled that a court could refuse if it felt that such a trial would be detrimental to the juvenile. Substantive changes include:

1) Replace trial juries with permanent commissions.

2) Replace grand juries with elected or appointed commissioners.

3) Permit the right for defendant to choose a true "peer jury".
   a. Certain number of jurors would be of same race, sex, national origin and approximate age as defendant.
   b. Juries could be selected with neutral backgrounds (different than defendant or prosecution).

4) Right to jury trial for military personnel.
   a. Replace military court with same civilian court system.
   b. Extend right to peer jury trial to military court. (Presently, the 3 or 5 judges must be two grades higher than defendant. However, defendant may request 1 or 2 peers for judges.)
   c. Correction of other inequities in military courts; provide right to counsel; require unanimous verdict for all criminal cases; abolish defendant's right to waive any rights.

5) Right to jury trial for juveniles.

6) Replace civil and/or criminal trial juries with three-judge panels.
   a. Eliminates hung juries.
   b. Minimize corruption.
   c. Decrease mistrials. (There are more chances of errors in jury trials.)
   d. Less time required (for jury selection, voir dire, decisions).
   e. Better qualified in legal matters.

7) Eliminate cognovit notes (confessions of guilt) and judgments based on them.
   a. Cognovit notes deny due process; judgment is rendered without jury.

b. Only three states specifically permit cognovit judgments without restrictions; two states make them a misdemeanor; and seventeen states place procedural restriction on their use.
c. Potential for abuse by state's prosecution is great; cognovit notes constitute a ruling by verdict and can only be challenged on the issue of jurisdiction.

8) Eliminate or restrict peremptory challenges.
   a. Right to jury trial is affected by manipulation of jury by prosecution or defense.
   b. Greater manpower and financial resources (for jury investigation) or prosecution affects defendant's right to fair jury.

9) Restrict judge's instructions to jury.
   a. Standardization of instructions would reduce errors (resulting in loss of defendant's rights and possible overturning of verdicts).
   b. Audio or visual recording of judge instructions would enable jury to recall instructions during deliberations.
   c. Greater or lesser judge interpretation of law and possible charges.

10) Improve use of proof or evidence (affecting right to fair trial).
   a. Often technical rules governing use of evidence slow down trials.
   b. Often technical errors in use of evidence lead to reversible error and verdict is void.

Squirrel Cases: Certain changes may be made that affect the jury system. Popularized by the University of Houston and other more devious debate squads, "squirrel" cases try to fulfill the proposition by using a related problem area that can be shown to affect (fulfill) the proposition. Any high school debate team using a squirrel case should be quite clear in showing how the case directly affects (fulfills) the proposition; otherwise, many judges will not (and should not) accept the topicality of the case. For this year's topic, there are several good possibilities for developing (legitimate?) squirrel cases.

1) Use juries to affect compulsory arbitration in civil damage suits.

2) Combine the federal and state court systems.
   a. It would provide a standardized method of jury selection.
   b. It would avoid duplication.

3) Eliminate or restrict press coverage of arrests. Possibly, limit any comment until after trial.
   a. Press restrictions would increase chances for impartial jury.

4) Change the drug laws.
   a. Legalization of marijuana would eliminate jury trials for the offense.
   b. A national drug care center should be established; commitment and treatment could replace drug trials.

5) Full disclosure should be made of all information available.
   a. Prosecutor presently has advantage due to larger budget and staff.
   b. Defense should have same access to state staff.
   c. If jurors were investigated by prosecution, then the defense should have access to such information.

6) All state criminal codes should be replaced by national laws.
   a. Unification and standardization would result.
   b. Capital crimes should be federal offenses.
   c. Jurors would have only one set of criminal codes to consider.

Now, its your turn to think of cases or develop some of the procedural substantive, or squirrel cases given here. Have fun!

APPENDIX ONE

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APPENDIX TWO

PRECEDENT-SETTING SUPREME COURT CASES

In preparing for this debate topic, it is necessary to understand United States Supreme Court decisions that have already been rendered. The Supreme Court decisions or interpretations provide the basis for lower court decisions and serve as precedents for later decisions by the lower courts or Supreme Court. This appendix will provide brief summaries of significant Supreme Court cases on this topic.

Of course, these summaries are necessarily fragmentary and only contain the essence (not the full circumstances) of the decision. Lengthy majority and dissenting opinions, supporting citations and studies, and the wealth of arguments and evidence on both sides must be found in other sources. Before using these decisions in an affirmative case, a debater should read the complete decisions himself. Compilations of the Supreme Court decisions are found in the Supreme Court Reporter, St. Paul, Minn.: West Publishing Co. 1880-1971. Detailed summaries of each case are found in Cases and Materials on Constitutional Rights and Liberties by William B. Lockhart, Yale Kamisar and Jesse H. Choper, St. Paul, Minn.: West Publishing Co., 1970. This latter reference is probably sufficient for debate needs.

Each summary includes a citation immediately following the date. This should enable a debater to find the complete case in the Supreme Court Reporter or another source.

Ex Parte Milligan (1866) (Military) 71 U.S.

A military court cannot legally try and sentence a civilian under martial law. Martial rule can never exist where the courts are open, and have unobstructed exercise of their jurisdiction.

Strauder vs. West Virginia (1880) 100 U.S. 303, L.Ed. 664.

Race or color may not be used as a basis for elimination of a juror.

Ex Parte Quirin (1942) [illegible] U.S.
When enemy forces with[illegible] uniforms secretly infiltrate for the purpose of committing hostile acts, they are not entitled to "prisoner of war" status.

Duncan vs. Kahanamoka (1946) 66 S.Ct. 606.
Martial law was not intended to authorize the supplanting of courts by military tribunals.

In Re Yamashita (1946) 66 S.Ct. 340.
Articles of War applied only to members of American armed forces and to personnel accompanying them.

Griffin vs. Illinois (1957) 76 S.Ct. 585.
The right of appeal may not depend on the defendant's financial situation.

Irvin vs. Dowd (1961) 81 S.Ct. 1639.
Jurors do not have to be totally ignorant of the facts and issues involved in a case. If a juror can set aside his impressions or opinions and base the verdict on the evidence presented, it is sufficient.

Yale Kamisar vs. Jesse H. Choper (1963) 48 Minn. L. Rev. 1, 7-14.
Indigents have a right to counsel when filing for appeal of a federal conviction, or when preparing a petition for certiorori or direct review.

Douglass vs. California (1963) 83 S.Ct. 814.
Counsel must be provided for appeal. Denial of counsel for appeal would be discriminatory. (Similar to "Griffin vs. Illinois".)

Sheppard vs. Maxwell (1966) 86 S.Ct. 1507.
Where it is reasonably likely that prejudicial news prior to a trial will prevent a fair trial, the judge should continue the case until the threat wanes or transfer it to another location less permeated with publicity. Courts must take steps to protect a trial from outside prejudicial interference.

Dennis vs. U.S. (1966)
There is little need for secrecy for a grand jury hearing.

Parker vs. Gladden (1966)
The right to an impartial jury is violated when prejudicial statements are made by the bailiff to jurors.

Cheff vs. Schnackenberg (1966) 86 S.Ct. 1523.
Petty offenses and federal criminal contempt sentences do not have to be tried before a jury.

Shillitani vs. U.S. (1966) 86 S.Ct. 1531.
Conditional sentences from a grand jury do not require trial by jury.

Coleman vs. Alabama (1967) 88 S.Ct. 2.
Systematic exclusion of Negroes from grand jury and petit jury denies equal protection to a defendant.

Neely vs. Martin K. Eby Construction Co. (1967).
U.S. District Court of Appeals has the power to render decisions contrary to a jury of a lower court.

In Re Gault (1967) 87 S.Ct. 1428.
A juvenile must be notified of the charges, given counsel, permitted to confront and question witnesses against him and is not required to testify against himself.

Witherspoon vs. Illinois (1968) 88 S.Ct. 1770.
A death sentence may not be executed if veniremen are excluded from the jury due to their opposition to the death penalty. (However, this decision did not reverse any guilty convictions; only involved the death sentence.)

Bruton vs. U.S. (1968) 88 S. Ct. 1620.
A co-defendant's confession cannot be admitted in court if it implicated the defendant in a joint trial.

Nieves vs. U.S. (1968) 280 F.Supp. 994.
Constitutional guarantees to trial by jury are extended to all juveniles tried in federal courts.

In Re Whittington (1968) 88 S.Ct. 1507.
Juvenile has a Constitutional right to a jury trial (strongly implied; not stated referred to 1967 In Re Gault case).

Bloom vs. Illinois (1968) 88 S.Ct. 1477.
Constitutional guarantees to a jury trial include serious cases of criminal contempt.

Duncan vs. Louisiana (1968) 88 S.Ct. 1444.
The state has the right to determine the number of jurors in agreement for a decision; e.g., unanimous, majority, two-thirds, or other. Also, state must permit jury trial for defendant in serious misdemeanor cases. A "serious misdemeanor" is considered one which is punishable by two years in prison.

U.S. vs. Jackson (1968) 88 S.Ct. 1209.
The death penalty clause of the Federal Kidnapping Act was invalidated. The clause was detrimental to the rights in the Fifth Amendment (right not to plead guilty) and the Sixth Amendment (right to demand a jury trial).

Bumper vs. North Carolina (1968) 88 S.Ct. 1788.
A defendant's right to an impartial jury is not denied when the prosecution challenges for cause all veniremen opposed to capital punishment.

Williams vs. Florida (1970) 399 U.S. 78.
A state may use 6-man juries in non-capital cases. Constitutional guarantees of trial by jury do not require 12 men.

APPENDIX THREE

COMMON LEGAL TERMS

Abet:	To encourage someone else to commit a crime; to assist or counsel him, or in some way aid or promote the accomplishment of a crime. An "abettor" differs from an "accessory" in that the former must be present and assisting in the crime.
Accessory:	Someone contributing to the commission of a crime without necessarily being present. He may be an accessory before (incites or encourages the commission of the crime), during (stands by while crime is committed without trying to prevent it) or after (conceals knowledge of the crime).
Accomplice:	Someone who deliberately and willingly associates himself with the perpetrator of a crime.
Accusation:	A formal charge filed against an individual; contains the alleged offenses.
Alternate jurors:	Additional jurors (over the regular twelve) who sit with regular jury and hear case so that they may replace regular jurymen in emergencies.
Appeal:	A complaint filed with a higher court to reverse a decision (usually on the grounds that the verdict was unjust or contrary to law).
Appellant:	The individual making the appeal.
Arraignment:	The time at which the defendant is called before the court to answer the charges in the indictment. The charge is read and the defendant pleads guilty or not guilty to each of the alleged offenses.

Bailiff:	The uniformed person who is responsible for maintaining order in the courtroom, summoning the jury, and taking custody of the jury during deliberations.
Certiorari, Writ of:	An order from a higher to a lower court, requesting a complete review of a particular case.
Challenges:	During an examination of the jury, the attorney's request to dismiss a prospective juror. A "challenge for cause or bias" asserts that the juror would be unable to render an impartial decision; the challenge for cause necessitates showing that the juror formed an opinion before the trial, has a bias or prejudice toward one side, or has some personal interest. A "peremptory challenge" requests the dismissal of a prospective juror for no stated reason. Usually, each attorney is permitted six or eight peremptory challenges.
Common Law:	Principles and procedures obtaining their authority from previous usage or judgments and decrees of courts; often "common laws" are unwritten.
Complainant:	The person making the complaint against the defendant.
Conjecture:	An inference or conclusion not supported by facts; often, a guess or presumption.
Connive:	Conspiring with the perpetrator of a crime.
Contempt:	Disobedience to a judge's order; or disregarding the authority of the court.
Deposition:	Written testimony of a witness (which is read to the jury as evidence).

Evidence: Testimony, statistic or other piece of information which helps to support or establish argument or statement. Some types of evidence include:

(1) Competent - relating to the issue at hand.
(2) Circumstantial - indirect, proving a principal fact only by inference or circumstance. Facts are drawn from deduction, not by personal observation or actual knowledge. Often, motivation, personal interest, and likelihood are used for the deduction.
(3) Conclusive - strong, convincing and, presumably unrefutable evidence.
(4) Corroborating - supportive, additional evidence; adds strength to previous evidence.
(5) Presumptive - evidence in which the principal facts are derived from probabilities.
(6) Prima Facie - evidence which appears good and adequate and, unless refuted, would be acceptable to support or establish a fact or conclusion.

Ex Post Facto Law: A law which is passed after the act occurred and which reverses the legality of the act. Such laws are forbidden by the Constitution; a law may not be applied retroactively.

Felony: A relatively serious crime; more serious than a misdemeanor. While the definition varies between states, punishment for a felony usually includes imprisonment for a year or more; theft, embezzlement, kidnapping, etc.

Foreman of the Jury: Speaks for the jury; its presiding officer.

Impeaching the Verdict: Dispute or challenge of the verdict by the courts.

Lawlessness of Juries:	This refers to situations in which juries disregard the law and/or facts in making their decision. They play the role of judicial policy maker; usually in these instances they permit an individual who is guilty of an offense to go free; in effect, the jury rules that the law is too harsh, unfair or outdated.
Misdemeanor:	A criminal offense less serious than a felony, usually not requiring imprisonment.
Mistrial:	A trial which is declared invalid because of a violation of proper courtroom procedures.
Quotient Verdict:	In a civil suit, the plaintiff's award is calculated according to the mean or median of all estimates by individual jurors.
Subpoena:	A court order requiring a witness to appear at a specific time and place; often, he is expected to bring records.
Variance:	An inconsistency in the evidence or allegation.
Venireman:	A prospective juror.
Voir Dire:	The preliminary examination of jurors.